

THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

MATTHEW GORSKI,

Plaintiff,

Civil Action No.

12-CV-12250

vs.

HON. MARK A. GOLDSMITH

CTX MORTGAGE CO., LLC,
et al.,

Defendants.

_____ /

ORDER OF DISMISSAL WITH PREJUDICE

On March 29, 2013, the Court issued an Opinion and Order granting Defendants' motion to dismiss (Dkt. 17). The Opinion also granted Plaintiff leave to amend his complaint to (i) demonstrate he was prejudiced by Defendants' alleged noncompliance with the Michigan foreclosure by advertisement statute, and (ii) to state more particularly the fraud claim as it relates to robo-signing. Opinion at 12. The Opinion states, in pertinent part, "Plaintiff's amended complaint is due on or before April 10, 2013. If Plaintiff has not filed an amended complaint by this date, the dismissal of Plaintiff's claims will be with prejudice." Id.

Plaintiff has not filed an amended complaint, and the deadline to do so has passed. However, on April 10, 2013, Plaintiff's counsel submitted a notice that Plaintiff had filed a Chapter 13 bankruptcy action, stating that notice was submitted so that the Court "may take whatever procedural steps are appropriate to ascertain and/or process any jurisdictional inconsistency with respect to the instant matter." (Dkt. 18.)

The notice of bankruptcy filing does not alter the Court's analysis regarding whether dismissal is appropriate. Although the filing of a bankruptcy petition imposes an automatic stay

on judicial proceedings “against the debtor . . . or to recover a claim against the debtor,” 11 U.S.C. § 362(a)(1), in the instant case the debtor is prosecuting this action; thus, the automatic stay does not impact this action. See, e.g., In re Palmdale Hills Property, LLC, 654 F.3d 868, 875 (9th Cir. 2011) (“The stay does not prevent a plaintiff/debtor from continuing to prosecute its own claims nor does it prevent a defendant from protecting its interests against claims brought by the debtor.”) (citation omitted); Black v. Ryder/P.I.E. Nationwide, Inc., 930 F.2d 505, 507 n.1 (6th Cir. 1991) (declining to stay the issuance of an opinion based on the filing of a bankruptcy petition, where the plaintiff’s claim was brought against a party other than the debtor).

Because Plaintiff has not filed an amended complaint within the time allowed by the Court, Plaintiff’s claims are now dismissed with prejudice.

SO ORDERED.

Dated: April 11, 2013
Flint, Michigan

s/Mark A. Goldsmith
MARK A. GOLDSMITH
United States District Judge

CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing document was served upon counsel of record and any unrepresented parties via the Court's ECF System to their respective email or First Class U.S. mail addresses disclosed on the Notice of Electronic Filing on April 11, 2013.

s/Deborah J. Goltz
DEBORAH J. GOLTZ
Case Manager